

**IN RE: IDAHO CODE OF JUDICIAL CONDUCT**

**ORDER AMENDING IDAHO  
CODE OF JUDICIAL CONDUCT**

The Court having reviewed a recommendation from the Administrative Conference with regard to ex parte communications in problem solving court proceedings, and being fully informed;

NOW, THEREFORE, IT IS HEREBY ORDERED, that Canon 3B(7) of the Idaho Code of Judicial Conduct be amended as follows:

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.\* A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication.

(b) A judge may obtain the advice of a disinterested expert on the law\* applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(c) A judge may consult with court personnel\* whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(e) During a scheduled court proceeding, including a conference, hearing, or trial, a judge may initiate, permit, or consider communications dealing with substantive matters or issues on the merits of the case in the absence of a party who had notice of the proceeding and did not appear.

(f) A judge presiding over a criminal or juvenile problem solving court may initiate, permit, or consider ex parte communications with members of the problem solving court team

at staffings\*, or by written documents provided to all members of the problem solving court team. A judge who has received any such ex parte communication regarding the defendant or juvenile while presiding over a case in a problem solving court shall not preside over any subsequent proceeding to terminate that defendant or juvenile from the problem solving court, probation violation proceeding, or sentencing proceeding in that case.

(eg) A judge may initiate or consider any ex parte communications when expressly authorized by law\* to do so.

IT IS FURTHER ORDERED, that the Idaho Code of Judicial Conduct be amended by the addition of the following definition to the Terminology section of the Code, following the definition of “Senior judge”:

“**Staffing**” means a regularly scheduled, informal conference not occurring in open court, the purpose of which is to permit the presiding judge and others, including counsel, to discuss a participant’s progress in the problem solving court, treatment recommendations, or responses to participant compliance issues.

IT IS FURTHER ORDERED, that this amendment shall be effective on the 4<sup>th</sup> day of August, 2008.

DATED this \_\_\_\_4th\_\_\_\_ day of August, 2008.

By Order of the Supreme Court

\_\_\_\_\_/s/\_\_\_\_\_  
Daniel T. Eismann  
Chief Justice

ATTEST: \_\_\_\_/s/\_\_\_\_\_  
Clerk